

operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents

(iv) Only those services expressly authorized by subdivisions (c)(2)(i) (A) and (B) of this section are permitted under this section.

(d) The reporting requirements of 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

[55 FR 3190, Jan. 30, 1990, as amended at 70 FR 57456, Sept. 30, 2005]

### **3.803 Certification and disclosure.**

(a) Any contractor who requests or receives a Federal contract exceeding \$100,000 shall submit the certification and disclosures required by the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence

Certain Federal Transactions, with its offer. Disclosures under this section shall be submitted to the contracting officer using OMB standard form LLL, Disclosure of Lobbying Activities.

(b) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (a) of this section. An event that materially affects the accuracy of the information reported includes—

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) of Congress contacted to influence or attempt to influence a covered Federal action.

(c) The contractor shall require the submittal of a certification, *and* if required, a disclosure form, by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(d) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the contracting officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.

[55 FR 3190, Jan. 30, 1990, as amended at 55 FR 38516, Sept. 18, 1990]

### **3.804 Policy.**

(a) The contracting officer shall obtain certifications and disclosures as required by the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, prior to the award of any contract exceeding \$100,000.

(b) The contracting officer shall forward a copy of all contractor disclosures furnished pursuant to the clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, to the official designated in accordance with agency procedures, for subsequent submission to Congress. The original of the disclosure shall be retained in the contract file.

#### **3.805 Exemption.**

The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibitions of this section whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of such exemption to Congress immediately after making such a determination.

#### **3.806 Processing suspected violations.**

Suspected violations of the requirements of the Act shall be referred to the official designated in agency procedures.

#### **3.807 Civil penalties.**

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804-3808, and 3812, insofar as the provisions therein are not inconsistent with the requirements of this subpart.

[55 FR 3190, Jan. 30, 1990, as amended at 67 FR 6120, Feb. 8, 2002]

#### **3.808 Solicitation provision and contract clause.**

(a) The provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, shall be included in solicitations expected to exceed \$100,000.

(b) The clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, shall be included in solicitations and contracts expected to exceed \$100,000.

### **Subpart 3.9—Whistleblower Protections for Contractor Employees**

SOURCE: 60 FR 37776, July 21, 1995, unless otherwise noted.

#### **3.900 Scope of subpart.**

This subpart implements 10 U.S.C. 2409 and 41 U.S.C. 251, *et seq.*, as amended by Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355).

#### **3.901 Definitions.**

As used in this subpart—

*Authorized official of an agency* means an officer or employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or the subject matter of the contract.

*Authorized official of the Department of Justice* means any person responsible for the investigation, enforcement, or prosecution of any law or regulation.

*Inspector General* means an Inspector General appointed under the Inspector General Act of 1978, as amended. In the Department of Defense that is the DOD Inspector General. In the case of an executive agency that does not have an Inspector General, the duties shall be performed by an official designated by the head of the executive agency.

[48 FR 42108, Sept. 19, 1983, as amended at 66 FR 2127, Jan. 10, 2001]

#### **3.902 Applicability.**

This subpart applies to all Government contracts.

#### **3.903 Policy.**

Government contractors shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).